

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United of America,)
)
)
Plaintiff,)
)
 ORDER
vs.)
)
Todd Christopher Zastoupil,) Case No. 1:04-cr-076
)
)
Defendant.)

On December 14, 2004, a jury found the Defendant, Todd Christopher Zastoupil (“Zastoupil”) guilty of the following offenses: sexual exploitation of children in violation of 18 U.S.C. §§ 2251(a) and 2251(e) (Count 1); and possession of materials involving the sexual exploitation of children in violation 18 U.S.C. § 2252(a)(4)(B) and 2252(b)(2) (Count 2). On June 14, 2005, the court sentenced Zastoupil to six-hundred months imprisonment on Count 1 and two-hundred forty months imprisonment on Count 2. The sentence was subsequently affirmed on appeal.

Zastoupil filed a Motion for Release of Documents on July 2, 2007, requesting that he be granted access to the case file.

I am requesting the release of all documents in the above mentioned case from this court and/or the North Dakota Public Defender’s office so I can properly prepare a 2255 motion this court on time as of 5-9-2007. I am without an attorney since my court appointed attorney Mr. Schmitz was granted permission to withdraw from this case and I am now being forced to proceed pro-se. I am requesting any and all documents filed in this case be turned over to me. Including but not limited to, all warrants, all transcripts, including Grand Jury, plea offers, indictments [sic] and jury information, discovery, all bonds and bond information, judgment and sentence, sentencing memorandum, pre-sentence report, Dr. Volk’s report, all motions and orders and if other documents were filed in this case but are not mentioned above. I would like them released to me also. I need the complete case file.

Docket No. 52.

A number of the documents requested by Zastoupil either do not exist (i.e., the bond) or were never docketed (e.g., pre-sentence reports, discovery, and plea offers). Consequently, these documents are not part of the case file. Zastoupil's defense counsel presumably has these documents in his possession. It should be noted, however, that Zastoupil's request for these documents is not styled as a motion to compel and there is nothing to suggest he has endeavored to obtain these documents from defense counsel. Unless and until Zastoupil can demonstrate that, despite his best efforts, he cannot obtain these documents from defense counsel, the court is not inclined to take up this matter as it pertains to materials outside the record.

A portion of the record, with trial exhibits and HIV test results being the primary examples, has been filed under seal. Although the court can hazard a guess as to why Zastoupil may want access to trial exhibits or other sealed materials, it cannot fathom how access to this material will substantially assist him in the preparation of a habeas petition. Consequently, the court finds there is no basis for granting Zastoupil copies of or access to any sealed documents. Zastoupil is entitled to access to the remainder of the file, however.

Zastoupil's Motion for Release of Documents (Docket No. 52) is therefore **GRANTED IN PART**. The Clerk's Office is directed to provide Zastoupil a copy of the case file excluding all documents filed under seal.

IT IS SO ORDERED.

Dated this 3rd day of July, 2007.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.

United States Magistrate Judge